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FILED

2008 AUG 28 AM 9:34

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY KMH DEPUTY

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES,

Plaintiff,

vs.

TATE AUTO, INC. dba PERFORMANCE
SPECIALTIES; ERNEST TATE; MARCY TATE
and DOES 1 THROUGH 10, Inclusive,

Defendants.

Case No.:

08 CV 1576 H LSP

CIVIL COMPLAINT

DEMAND FOR JURY TRIAL
[F.R.C.P. §38(b);
Local Rule 38.1]

Plaintiff, KAREL SPIKES (hereinafter referred to as
"Plaintiff"), file this cause of action against Defendants TATE
AUTO, INC. dba PERFORMANCE SPECIALTIES (hereinafter "PERFORMANCE
SPECIALTIES"), ERNEST TATE, MARCY TATE and DOES 1 THROUGH 10,
Inclusive, and would show unto the Court the following:

I.

JURISDICTION AND VENUE

1. This Court has original jurisdiction of this civil
action pursuant to 28 USC §1331, 28 USC §§1343(a)(3) and
1343(a)(4) for claims arising under the Americans with
Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's
supplemental jurisdiction, 28 USC §1367.

2. Venue in this Court is proper pursuant to 28 USC §§1391(b) and (c).

3. Pursuant to 28 USC §1367(a), Plaintiff shall assert all causes of action based on state law, as plead in this complaint, under the supplemental jurisdiction of the federal court. All the causes of action based on federal law and those based on state law, as herein stated, arose from a common nucleus of operative fact. That is, Plaintiff was denied equal access to Defendants' facilities, goods, and/or services in violation of both federal and state laws and/or was injured due to violations of federal and state access laws. The state actions of Plaintiff are so related to the federal actions that they form part of the same case or controversy. The actions would ordinarily be expected to be tried in one judicial proceeding.

II.

THE PARTIES

4. Defendant PERFORMANCE SPECIALTIES is, and at all times mentioned herein was, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. PERFORMANCE SPECIALTIES is located at 845 Grand Avenue, Spring Valley, CA (hereinafter "the subject property".) Plaintiff is informed and believes and thereon alleges that Defendant PERFORMANCE SPECIALTIES is, and at all times mentioned herein was, the owner, lessor or lessee of the subject property and/or the owner and/or operator of the public accommodation located at the subject property.

5. Defendant ERNEST TATE is, and at all times mentioned herein was, an individual residing in and/or doing business under

1 5. Defendant ERNEST TATE is, and at all times mentioned
2 herein was, an individual residing in and/or doing business under
3 the laws of the State of California. Plaintiff is informed and
4 believes and thereon alleges that Defendant ERNEST TATE is, and
5 at all times mentioned herein was, the owner, lessor or lessee of
6 the subject property.

7 6. Defendant MARCY TATE is, and at all times mentioned
8 herein was, an individual residing in and/or doing business under
9 the laws of the State of California. Plaintiff is informed and
10 believes and thereon alleges that Defendant MARCY TATE is, and at
11 all times mentioned herein was, the owner, lessor or lessee of
12 the subject property.

13 7. Plaintiff is informed and believes, and thereon
14 alleges, that Defendants and each of them herein were, at all
15 times relevant to the action, the owners, franchisees, lessees,
16 general partners, limited partners, agents, employees,
17 employers, representing partners, subsidiaries, parent
18 companies, joint venturers and/or divisions of the remaining
19 Defendants and were acting within the course and scope of that
20 relationship. Plaintiff is further informed and believes, and
21 thereon alleges, that each of the Defendants herein gave
22 consent to, ratified, and/or authorized the acts alleged herein
23 of each of the remaining Defendants.

24 8. Plaintiff is an otherwise qualified disabled
25 individual as provided in the Americans with Disabilities Act
26 of 1990, 42 USC §12102, Part 5.5 of the California Health &
27 Safety Code and the California Unruh Civil Rights Act, §§51, et
28 seq., 52, et seq., the California Disabled Persons Act, §§54,

1 et seq., and other statutory measures which refer to the
2 protection of the rights of "physically disabled persons."
3 Plaintiff visited the public accommodation owned and/or
4 operated by Defendants and/or located at the subject property
5 for the purpose of availing himself of the goods, services,
6 facilities, privileges, advantages, or accommodations operated
7 and/or owned by Defendants and/or located on the subject
8 property.

9 9. Plaintiff is informed and believes and thereon alleges
10 that the subject facility has been newly constructed and/or
11 underwent remodeling, repairs, or alterations since 1971, and
12 that Defendants have failed to comply with California access
13 standards which applied at the time of each such new
14 construction and/or alteration.

15 **III.**

16 **FACTS**

17 10. Plaintiff has a mobility impairment and uses a
18 wheelchair. Moreover, he has had a history of or has been
19 classified as having a physical impairment, as required by 42
20 USC §12102(2)(A).

21 11. On or about August 15, 2007, July 1, 2008 and
22 continuing through the present date, Plaintiff was denied full
23 and equal access to the facilities owned and/or operated by the
24 Defendants because the facility and/or subject property were
25 inaccessible to members of the disabled community who use
26 wheelchairs for mobility. Plaintiff was denied full and equal
27 access to portions of the property because of barriers which
28 included, but are not limited to, inaccessible cashier counter,

1 inaccessible restroom facilities and lack of accessible parking
2 space, as well as lack of signage for said space. Plaintiff
3 was also denied full and equal access because of discriminatory
4 policies and practices regarding accommodating people with
5 disabilities. Plaintiff filed this lawsuit to compel
6 compliance with access laws and regulations.

7 12. As a result of Defendants' failure to remove
8 architectural barriers, Plaintiff suffered injuries. People
9 with disabilities, because of the existing barriers, are denied
10 full and equal access to the Defendants' facilities. The ADA
11 has been in effect for more than 16 years. Given the vast
12 availability of information about ADA obligations, including
13 FREE documents which are available from the U.S. Department of
14 Justice by calling (800) 514-0301 or at the following web
15 sites: www.sba.gov/ada/smbusgd.pdf, www.ada.gov/taxpack.pdf and
16 www.usdoj.gov/crt/ada, the failure of Defendants to comply with
17 their barrier removal obligations is contemptible.

18 13. Plaintiff is an otherwise qualified individual as
19 provided in the Americans with Disabilities Act or 1990, 42 USC
20 §12102, the Rehabilitation Act of 1973, Section 504 (as amended
21 29 USC §794) and the California Unruh Civil Rights Act, Civil
22 Code §§51, 52, 54.1, and 54.3, and other statutory measures
23 which refer to the protection of the rights of "physically
24 disabled persons." Plaintiff visited the public facilities
25 owned and operated by Defendants for the purpose of availing
26 himself of the goods and services offered and provided by
27 Defendants and/or for the purpose of obtaining removal of
28

1 architectural barriers and/or modification of policies,
2 practices and procedures to provide accessibility to people
3 with disabilities. Plaintiff was injured in fact, as set forth
4 more specifically herein.

5 14. Plaintiff alleges that Defendants will continue to
6 operate public accommodations which are inaccessible to him and
7 to other individuals with disabilities. Pursuant to 42 USC
8 §12188(a), Defendants are required to remove architectural
9 barriers to their existing facilities.

10 15. Plaintiff has no adequate remedy at law for the
11 injuries currently being suffered in that money damages will
12 not adequately compensate Plaintiff for the amount of harm
13 suffered as a result of exclusion from participation in the
14 economic and social life of this state.

15 16. Plaintiff believes that architectural barriers
16 precluding Plaintiff full and equal access of the public
17 accommodation will continue to exist at Plaintiff's future
18 visits, which will result in future discrimination of
19 Plaintiff, in violation of the Americans with Disabilities Act.
20 Plaintiff is currently being subjected to discrimination
21 because Plaintiff cannot make use of and obtain full and equal
22 access to the facilities, goods and/or services offered by
23 Defendants to the general public. Plaintiff seeks damages for
24 each offense relating to each of Plaintiff's visits to the
25 subject property when Plaintiff was denied full and equal
26 access to the subject property or was deterred from attempting
27 to avail himself of the benefits, goods, services, privileges
28 and advantages of the place of public accommodation at the

1 subject property because of continuing barriers to full and
2 equal access.

3 IV.

4 FIRST CLAIM FOR
5 VIOLATION OF AMERICAN WITH DISABILITIES ACT
6 42 USC §12101, et seq.

7 17. Plaintiff re-alleges and incorporates by reference
8 each and every allegation contained in paragraphs 1 through 16,
9 inclusive, as though set forth fully herein.

10 18. Plaintiff was denied full and equal access to
11 Defendants' goods, services, facilities, privileges,
12 advantages, or accommodations within a public accommodation
13 owned, leased and/or operated by Defendants, in violation of 42
14 USC §12182(a). Plaintiff was, therefore, subjected to
15 discrimination and is entitled to injunctive relief pursuant to
16 42 USC §12188 as a result of the actions or inaction of
17 Defendants.

18 19. Among other remedies, Plaintiff seeks an injunctive
19 order requiring compliance with state and federal access laws
20 for all access violations which exist at the property,
21 requiring removal of architectural barriers and other relief as
22 the court may deem proper. Plaintiff also seeks any other
23 order that will redress the discrimination to which he has been
24 subjected, is being subjected and/or will be subjected.

25 V.

26 SECOND CLAIM FOR
27 VIOLATION OF CALIFORNIA CIVIL CODE

28 20. Plaintiff re-alleges and incorporates by reference
each and every allegation contained in paragraphs 1 through 19,

1 inclusive, as though set forth fully herein.

2 21. Based on the facts plead hereinabove and elsewhere in
3 this complaint, Defendants did, and continue to, discriminate
4 against Plaintiff and persons similarly situated by denying
5 disabled persons full and equal access to and enjoyment of the
6 subject facilities and of Defendants' goods, services,
7 facilities, privileges, advantages or accommodations within a
8 public accommodation, in violation of California Civil Code
9 §§51, et seq., 52, et seq., and 54, et seq.

10 22. Defendants' actions constitute a violation of
11 Plaintiff's rights under California Civil Code §§51, et seq.,
12 52, et seq., and 54, et seq. and therefore Plaintiff is
13 entitled to injunctive relief remedying all such violations of
14 California access laws and standards. In addition, Plaintiff
15 is entitled to damages under California Civil Code §54.3 for
16 each offense. The amount of damages suffered by Plaintiff is
17 not yet determined. When the amount is ascertained, Plaintiff
18 will ask the Court for leave to amend this complaint to reflect
19 this amount. Plaintiff is also entitled to and requests
20 attorneys' fees and costs.

21 23. The actions of Defendants were and are in violation of
22 the Unruh Civil Rights Act, California Civil Code §§51, et seq.
23 and therefore Plaintiff is entitled to injunctive relief
24 remedying all such violations of California access laws and
25 standards. In addition, Plaintiff is entitled to damages under
26 California Civil Code §52 for each offense. The amount of
27 damages suffered by Plaintiff is not yet determined. When the
28 amount is ascertained, Plaintiff will ask the Court for leave

1 to amend this complaint to reflect this amount.

2 24. Plaintiff seeks all of the relief available to him
3 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, and
4 any other Civil Code Sections which provide relief for the
5 discrimination suffered by Plaintiff, including damages and
6 attorneys fees.

7 VI.

8 THIRD CLAIM FOR
9 VIOLATION OF HEALTH AND
SAFETY CODE §19950, ET SEQ.

10 25. Plaintiff re-alleges and incorporates by reference
11 each and every allegation contained in paragraphs 1 through 24,
12 inclusive, as though set forth fully herein.

13 26. Defendants' facilities are public accommodations
14 within the meaning of Health and Safety Code §19950, et seq.,
15 and Plaintiff is informed and believes and thereon alleges that
16 Defendants have newly built or altered the subject property
17 and/or the subject facility since 1971 within the meaning of
18 California Health and Safety Code §19959. The aforementioned
19 acts and omissions of Defendants constitute a denial of equal
20 access to the use and enjoyment of the Defendants' facilities
21 by people with disabilities.

22 27. Defendants' failure to fulfill their duties to provide
23 full and equal access to their facilities by people with
24 disabilities has caused Plaintiff to suffer deprivation of
25 Plaintiff's civil rights, as well as other injuries.

26 28. As a result of Defendants' violations of Health and
27 Safety Code §§19955, et seq., described herein, Plaintiff is
28 entitled to and requests injunctive relief pursuant to Health

1 and Safety Code §§19953, and to reasonable attorney's fees and
2 costs.

3 **VII.**

4 **FOURTH CLAIM FOR DECLARATORY RELIEF**

5 29. Plaintiff re-alleges and incorporates by reference
6 each and every allegation contained in paragraphs 1 through 28,
7 inclusive, as though set forth fully herein.

8 30. An actual controversy now exists in that Plaintiff is
9 informed and believes and thereon alleges that Defendants'
10 premises are in violation of the disabled access laws of the
11 State of California including, but not limited to, Civil Code
12 §§51, et seq., §§52, et seq., §§54, et seq., Health and Safety
13 Code §§19950, et seq., Government Code §§4450, et seq. and
14 7250, et seq., Title 24 of the California Code of Regulations,
15 and/or Title III of the Americans with Disabilities Act and its
16 implementing Accessibility Regulations.

17 31. A declaratory judgment is necessary and appropriate at
18 this time so that each of the parties may know their respective
19 rights and duties and act accordingly.

20 **VIII.**

21 **FIFTH CLAIM FOR INJUNCTIVE RELIEF**

22 32. Plaintiff re-alleges and incorporates by reference
23 each and every allegation contained in paragraphs 1 through 31,
24 inclusive, as though set forth fully herein.

25 33. Plaintiff will suffer irreparable harm unless
26 Defendants are ordered to remove architectural barriers at
27 Defendants' public accommodation, and/or to modify their
28 policies and practices regarding accommodating people with

1 34. Plaintiff seeks injunctive relief to redress
2 Plaintiff's injuries.

3 IX.

4 JURY DEMAND

5 35. Pursuant to Rule 38 of the Federal Rules of Civil
6 Procedure, Plaintiffs hereby request a jury trial.

7 WHEREFORE, Plaintiff prays for judgment against the
8 Defendants, PERFORMANCE SPECIALTIES, ERNEST TATE, MARCY TATE
9 and DOES 1 through 10, as follows:

- 10 1. For injunctive relief, compelling Defendants to comply
11 with the Americans with Disabilities Act, the Unruh
12 Civil Rights Act and the Disabled Persons Act. Note:
13 the plaintiff is not invoking section 55 of the
14 California Civil Code and is not seeking injunctive
15 relief under that section;
- 16 2. That the Court declare the respective rights and
17 duties of Plaintiff and Defendants as to the removal
18 of architectural barriers at Defendants' public
19 accommodations;
- 20 3. An order awarding Plaintiff actual, special and/or
21 statutory damages for violation of his civil rights
22 and for restitution including, but not limited to,
23 damages pursuant to the applicable Civil Code Sections
24 including, but not limited to, §§52 and 54.3 for each
25 and every offense of Civil Code §§51 and 54;
- 26 4. An award of compensatory damages according to proof;
- 27 5. An award of up to three times the amount of
28 actual damages pursuant to the Unruh Civil

- 1 5. An award of up to three times the amount of
- 2 actual damages pursuant to the Unruh Civil
- 3 Rights Act and the Disabled Persons Act; and
- 4 6. An order awarding Plaintiff reasonable attorneys' fees
- 5 and costs;
- 6 7. Such other and further relief as the Court deems
- 7 proper.

8 DATED:

8/24/08

LAW OFFICES OF AMY B. VANDEVELD

9
10
11 AMY B. VANDEVELD,
Attorney for Plaintiff

JS-44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.)

I (a) PLAINTIFFS

San Diego

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

TATE AUTO, INC. dba
PERFORMANCE SPECIALTIES;
ERNEST TATE; MARCY TATE
DOES 1 THROUGH 10, inclusive,

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Amy B. Vandeveld, Esq.
LAW OFFICES OF AMY B. VANDEVELD
1850 Fifth Avenue, Suite 22
San Diego, CA 92101 (619) 231-8883

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For Diversity Cases Only)

	PT	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3
Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12111, 11281-12184 and 12201 et. seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<ul style="list-style-type: none"> 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veterans Benefits 160 Stockholders Suits 190 Other Contract 195 Contract Product Liability 	<p>PERSONAL INJURY</p> <ul style="list-style-type: none"> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury <p>PERSONAL INJURY</p> <ul style="list-style-type: none"> 362 Personal Injury - Medical Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <ul style="list-style-type: none"> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability 	<ul style="list-style-type: none"> 610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC881 630 Liquor Laws 640 RR & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other <p>LABOR</p> <ul style="list-style-type: none"> 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act 	<ul style="list-style-type: none"> 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <ul style="list-style-type: none"> 820 Copyrights 830 Patent 840 Trademark <p>SOCIAL SECURITY</p> <ul style="list-style-type: none"> 861 HIA (13958) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(a)) <p>FEDERAL TAX SUITS</p> <ul style="list-style-type: none"> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS - Third Party 26 USC 7609 	<ul style="list-style-type: none"> 410 State Reappointment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 810 Selective Service 850 Securities/Commodities Exchange 875 Customer Challenge 12 USC 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State 990 Other Statutory Actions
<p>REAL PROPERTY</p> <ul style="list-style-type: none"> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Tort to Land 245 Tort Product Liability 290 All Other Real Property 	<p>CIVIL RIGHTS</p> <ul style="list-style-type: none"> 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 440 Other Civil Rights 	<p>PRISONER PETITIONS</p> <ul style="list-style-type: none"> 510 Motions to Vacate Sentence Habeas Corpus 530 General 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prisoner Conditions 		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding • 2 Removal from State Court • 3 Remanded from Appellate Court • 4 Reinstated or Reopened • 5 Transferred from another district (specify) • 6 Multidistrict Litigation • 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

• CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$ To be determined at trial

Check YES only if demanded in complaint:
JURY DEMAND: ☒ YES • NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

DATE

SIGNATURE OF ATTORNEY OF RECORD

DOOMA\PCDOCS\WORDPERFECT\22816\ January 24, 2000 (3:10pm)

#154498 \$350

8/29/08

SAC

CR

FILED

2008 AUG 28 AM 9:34

San Diego District Court

BY

DEPUTY

'08 CV 1576 H LSP

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154498 - TC

**August 28, 2008
09:37:17**

Civ Fil Non-Pris

USAO #: 08CV1576

Judge.: MARILYN L HUFF

Amount.: \$350.00 CK

Check#: PC3447

Total-> \$350.00

**FROM: KAREL SPIKES
VS
TATE AUTO**